

STATE OF MICHIGAN  
IN THE SUPREME COURT

COUNTY ROAD ASSOCIATION OF MICHIGAN  
A Michigan nonprofit corp. & CHIPPEWA COUNTY  
ROAD COMMISSION, a public body corporate,

Plaintiffs-Appellants,

-vs-

JOHN M. ENGLER, GOVERNOR OF THE STATE  
OF MICHIGAN, GREG ROSINE, DIRECTOR OF THE  
MICHIGAN DEPARTMENT OF TRANSPORTATION,  
MICHIGAN DEPARTMENT OF TRANSPORTATION,  
DUANE E. BERGER, DIRECTOR OF THE MICHIGAN  
DEPARTMENT OF MANAGEMENT & BUDGET,  
MICHIGAN DEPARTMENT OF MANAGEMENT &  
BUDGET, DONALD H. GILMORE, STATE BUDGET  
DIRECTOR, DOUGLAS B. ROBERTS, STATE  
TREASURER, MICHIGAN DEPARTMENT OF  
TREASURY, CANDICE S. MILLER, SECRETARY  
OF STATE & MICHIGAN DEPARTMENT OF STATE,

Defendants-Appellees,

-and-

MICHIGAN PUBLIC TRANSIT ASSOCIATION,  
ANN ARBOR TRANSPORTATION AUTHORITY,  
SUBURBAN MOBILITY AUTHORITY FOR  
REGIONAL TRANSPORTATION, CAPITAL AREA  
TRANSPORTATION AUTHORITY MICHIGAN  
ROAD BUILDERS ASSOCIATION AND  
ASSOCIATION UNDERGROUND CONTRACTORS,

Intervening-Appellants,

Supreme Court  
No. 125665

Court of Appeals  
No. 245767

Ingham County Circuit Court  
No. 02 000308 CZ



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fo

THE MICHIGAN MUNICIPAL LEAGUE'S AMICUS CURIAE BRIEF

PROOF OF SERVICE

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**STATEMENT OF THE QUESTION INVOLVED**

**DOES THE GOVERNOR LACK AUTHORITY UNDER  
ART 5, § 20 TO REDUCE FUNDS ALLOCATED TO  
THE COMPREHENSIVE TRANSPORTATION FUND,  
A FUND CONSTITUTIONALLY DEDICATED FOR  
SPECIFIC PURPOSES?**

CRAM and the Chippewa County Road Commission answer “yes.”

The State Defendants answer “no.”

Intervening Parties, the Michigan Public Transit Association,  
Ann Arbor Transportation Authority, and Capital Area  
Transportation Authority answer “yes.”

Amicus Curiae Michigan Municipal League answers “yes.”

The Court of Appeals would presumably answer “no.”

The trial court would presumably answer “yes.”

## STATEMENT OF FACTS

The Michigan Municipal League relies upon the statement of facts as set forth in the briefs filed by the County Road Association of Michigan and the Chippewa County Road Commission.

## ARGUMENT

### **THE GOVERNOR LACKS AUTHORITY UNDER ART 5, § 20 TO REDUCE FUNDS ALLOCATED TO THE COMPREHENSIVE TRANSPORTATION FUND, A FUND CONSTITUTIONALLY DEDICATED FOR SPECIFIC PURPOSES.**

**A. The Constitutional Issues Presented Are Matters Of Public Interest  
And Require A Clear And Immediate Resolution.**

This Court typically limits its consideration of appeals to those set forth in MCR

7.302. That rule sets forth the grounds for granting an application for leave to appeal:

(1) the issue involves a substantial question as to the validity of a legislative act;

(2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;

(3) the issue involves legal principles of major significance to the state's jurisprudence;

(4) in an appeal before decision by the Court of Appeals,

(a) delay in final adjudication is likely to cause substantial harm, or

(b) the appeal is from a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid;

(5) in an appeal from a decision of the Court of Appeals, the decision is clearly erroneous and will cause material injustice or the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals; or

(6) in an appeal from the Attorney Discipline Board, the decision is erroneous and will cause material injustice.

Application of these provisions to the issues presented for review confirms that this is a grant-worthy application for leave to appeal.

**B. The Tools For Analysis Of The Constitutional Issues Presented Here Derive From The Rule Of Common Understanding And Support CRAM's Position.**

Constitutional questions are reviewed de novo on appeal. *Oakland County v Michigan*, 456 Mich 144, 149; 566 NW2d 616 (1977). The primary objective in interpreting a constitutional provision is to determine the text's meaning to the ratifiers, the people, at the time of ratification. *County of Wayne v Hathcock*, 471 Mich 445; 684 NW2d 765 (2004). This rule of common understanding has been the most frequent interpretive tool used by this Court for many years when considering the meaning of Michigan constitutional provisions. *Federated Publications, Inc v Michigan State University Bd of Trustees*, 460 Mich 75, 84; 594 NW2d 491 (1999). This Court has embraced Justice Cooley's explanation of this principle:

A constitution is made for the people and by the people. The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves would give it. [*Traverse City School Dist v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971) citing Cooley, Constitutional Limitations (6<sup>th</sup> ed), p 81.]

This Court has also taught that it is appropriate to consider "the circumstances surrounding the adoption of the provision and the purpose it is designed to accomplish.

*Bolt v Lansing*, 459 Mich 152, 160; 587 NW2d 264 (1998). If the text includes a technical, legal term, then the court is to rely on the understanding of the term by those sophisticated in the law as of the time of the constitutional drafting and ratification.

*Silver Creek Drain Dist v Extrusions Division, Inc*, 468 Mich 367, 375; 663 NW2d 436

(2003). See also *Michigan Coalition of State Employee Unions v Civil Service Comm'n*, 465 Mich 212, 222; 634 NW2d 692 (2001). Justice Cooley explained this aspect of constitutional interpretation as well:

It must not be forgotten, in construing our constitutions, that in many particulars they are but the legitimate successors of the great charters of English liberty, whose previous declaratory of the rights of the subjects have acquired a well-understood meaning, which the people must be supposed to have had in view in adopting them. 1 Cooley, *Constitutional Limitations* (8<sup>th</sup> ed), p 130-133.

Where the meaning of a word or phrase cannot be discerned merely by a careful reading of the phrase, it may fall into that category that this Court has described as technical legal terms or phrases of art in the law. *Silver Creek Drain District v Extrusions Division, Inc*, 468 Mich 367; 663 NW2d 436 (2003). In that case, the word or phrase will be given the meaning “that those sophisticated in the law understood at the time of enactment unless it is clear from the constitutional language that some other meaning was intended.” *Michigan Coalition of State Employee Unions v International Union, United Automobile, Aerospace & Agricultural Implement Workers of American*, 465 Mich 212; 634 NW2d 692 (2001). The Court looks for this meaning by examining decisions of the time, law review articles, and other legal documents and materials. See e.g., *Phillips v MIRAC, Inc*, 470 Mich 415; 685 NW2d 174 (2004).

The issues presented in this appeal involve several provisions of the Michigan constitution. The common understanding of the text supports strong protection for constitutionally dedicated funds. That understanding is strengthened by analysis of the understanding of these provisions by those sophisticated in the law when they were enacted. The constitutionally dedicated funds were established to prevent the very efforts



we see here. They were intended to assure that in hard economic times, efforts to balance the budget did not come at the expense of constitutionally dedicated funds.

**C. Under Article 5, § 20, The Governor Lacks Authority To Reduce Expenditures By Diverting Funds That Are Constitutionally Dedicated For Specific Purposes.**

Article 5, section 20 governs the governor's right to reduce expenditures in lean budget times. The text is as follows:

No appropriation shall be a mandate to spend. The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures authorized by appropriations whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based. Reductions in expenditures shall be made in accordance with procedures prescribed by law. The governor may not reduce expenditures of the legislative and judicial branches or from funds constitutionally dedicated for specific purposes.

The Convention Comment explains the basis for the final sentence:

The final sentence protects the separation of powers doctrine by preventing executive reduction of expenditures for the coordinate legislative and judicial branches of government. It would also prohibit the governor from making reductions in funds dedicated by the constitution for specific purposes.

In its decision interpreting and applying this provision in connection with art 9, § 9, the Court of Appeals held that general sales tax revenues apportioned to the Comprehensive Transportation Fund are not constitutionally dedicated funds. (Opinion, pp 4-5). As a result, the Court concluded that it was an abuse of discretion to issue a preliminary injunction to prevent the reduction of these funds, reached the merits at this stage of the proceedings, and directed the trial court "on remand to enter a judgment on

the merits of this case.” (Opinion, p 6). The issue presented in this case arises out of interpretation of the last sentence of this provision.

The last sentence of art 5, § 20 prohibits the governor from reducing expenditures “from funds constitutionally dedicated for specific purposes.” Const 1963, art 5, § 20.

The Court of Appeals read this to mean that moneys placed into the Comprehensive Transportation Fund could nonetheless be reduced because art 9, § 9 does not dedicate any portion of the general sales tax revenue to comprehensive transportation purposes.

But this interpretation fails to adequately take into account the language of art 5, § 20.

That language bars a reduction “from funds” that are constitutionally dedicated.

**D. Art 9, § 9 Dedicates Specified Taxes To Funds For Comprehensive Transportation Purposes.**

The Michigan Constitution strictly limits the use of both specific and general taxes imposed directly or indirectly on specified transportation-related goods and services.

Const 1963, art 9, § 9. The text of that provision is as follows:

All specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and to propel aircraft and on registered motor vehicles and aircraft shall, after the payment of necessary collection expenses, be used exclusively for transportation purposes as set forth in this section.

Not less than 90 percent of the specific taxes, except general sales and use taxes and regulator fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and on registered motor vehicles shall, after the payment of necessary collection expenses, be used exclusively for the transportation purposes of planning, administering, constructing, reconstructing, financing, and maintaining state, county, city, and village roads, streets, and bridges designed primarily for the use of motor vehicles using tires and reasonable appurtenances to those state, county, city, and village roads, streets, and bridges.

The balance, if any, of the specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and on registered motor vehicles, after the payment of necessary collection expenses; 100 percent of the specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel aircraft and on registered aircraft, after the payment of necessary collection expenses; and not more than 25 percent of the general sales taxes, imposed directly or indirectly on fuels sold to propel motor vehicles upon highways, on the sale of motor vehicles, and on the sale of the parts and accessories of motor vehicles, after the payment of necessary collection expenses; shall be used exclusively for the transportation purposes of comprehensive transportation purposes as defined by law.

The legislature may authorize the incurrence of indebtedness and the issuance of obligations pledging the taxes allocated or authorized to be allocated by this section, which obligations shall not be construed to be evidence of state indebtedness under this constitution.

The language makes clear that all revenue from these specific taxes, not including general sales and use taxes and regulatory fees, is to be “used exclusively for transportation purposes” except for “payment of necessary collection expenses.” *Id.* In other words, the provision is a constitutional limitation intended to protect the specified revenue from motor and aircraft fuels for transportation purposes. At the same time, it allows for the “necessary” costs of collection to be deducted. *Id.*

The provision carefully and explicitly allocates not less than ninety percent of these specific taxes to “be used exclusively for the transportation purposes of planning, administering, constructing, reconstructing, financing, and maintaining state, county, city, and village roads, streets, and bridges designed primarily for the use of motor vehicles using tires, and reasonable appurtenances to those state, county, city, and village roads, streets, and bridges.” Const 1963, art 9, § 9. The provision also carefully allocates the

balance to be used for “the purposes of comprehensive transportation purposes as defined by law.” *Id.* This balance includes one hundred percent of the specific taxes excluding necessary collection expenses. *Id.*

The provision also allocates not more than twenty-five percent of the general sales taxes, “imposed directly or indirectly on fuels sold to propel motor vehicles upon highways, on the sale of motor vehicles, after the payment of necessary collection expenses.” *Id.* The language makes clear that a specified percentage of the “general sales taxes, imposed directly or indirectly on fuels sold to propel motor vehicles upon highways, on the sale of motor vehicles, after the payment of necessary collection expenses; shall be used exclusively for the transportation purposes of comprehensive transportation purposes as defined by law.” Const 1963, art 9, § 9. Both of these funds are constitutionally dedicated to specified purposes: in one case, to “transportation purposes” as defined in the section and in the other to “comprehensive transportation purposes” as “defined by law.” *Id.*

This Court has previously considered and rejected efforts to circumvent constitutional limits by expansively redefining language included in the constitutional text. *WPW Acquisition Co v City of Troy*, 466 Mich 117, 121; 643 NW2d 564 (2002). The City of Troy sought to increase an assessment by redefining the meaning of “additions” to include “increases in the value of property attributable to an increased occupancy rate,” a meaning inconsistent with the term as understood when adopted. This Court rejected the suggestion that the Legislature was entitled to redefine such terms at its will and have the Court defer to its redefinition. To the contrary, this Court refused to

“adopt such a mode of interpretation [which] would, when applied in the future to other constitutional language, hollow out the people’s ability to place limits on legislative power.” *Id.* at 121.

The Court of Appeals opinion stated:

The circumstances that lead to the amendment of art 9, § 9 in 1978, indicate that specific sales taxes and general sales taxes are not intended to be similarly treated but are intended to remain as separate and as apart as they had before the 1978 amendment. 2004 WL 66772 \*4.

The Court of Appeals drew this conclusion from the “more flexible distribution schemes for the two types of taxes. *Id.* The Court of Appeals’ analysis was logically flawed. In the Court of Appeals’ view, flexibility concerning the amount to allocate in the first instance means that the funds, once so allocated, are not constitutionally dedicated funds subject to the protection of the constitution. But this analysis is inconsistent with the text of both art 9, § 9 and art 5, § 20. It undercuts the protection intended by creating a process for allocating money into these funds and limiting efforts to divert them, once they are so-allocated. And it ignores the constitutional history which suggests a strong desire to protect these funds.

When the voters adopted this provision, they understood that they were protecting general tax revenues once they were allocated to comprehensive transportation purposes. This Court should unequivocally so rule.

**RELIEF**

WHEREFORE, the Michigan Municipal League, by and through its attorneys, Plunkett & Cooney, P.C., respectfully requests that this Court grant the application for leave to appeal and grant it such other relief as is proper in law and equity.

Respectfully submitted,

PLUNKETT & COONEY, P.C.

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